

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

Reissued for Public Availability Date: July 17, 2023

MICHAEL VEYTSEL,

*

No. 23-428V

*

Petitioner,

*

Special Master Christian J. Moran

*

v.

*

Filed: June 14, 2023

*

SECRETARY OF HEALTH
AND HUMAN SERVICES,

*

*

Respondent.

*

Michael Veytsel, *pro se*, Ridgewood, NJ, for petitioner;

Heather Lynn Pearlman, United States Dep't of Justice, Washington, D.C., for respondent.

UNPUBLISHED DECISION DISMISSING PETITION¹²

Michael Veytsel filed a petition under the National Childhood Vaccine Injury Act (Vaccine Act) on March 28, 2023. This was Mr. Veytsel's second petition; he previously filed a petition on May 18, 2022, No. 22-544V, which was dismissed for failure to present evidence. In both petitions, Mr. Veytsel requested compensation for "injuries, including autism spectrum disorder" allegedly caused by a measles-mumps-rubella vaccine administered to him on January 13, 1988. As the Vaccine Act allows only one petition per vaccine administration, Mr. Veytsel was ordered to show cause as to why his second petition should not be dismissed as impermissibly filed. Mr. Veytsel did not comply with the show cause order. Accordingly, Mr. Veytsel's petition is DISMISSED as statutorily barred under 42 U.S.C. § 300aa-11(b)(2).

¹ Because this Decision contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims' website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (Federal Management and Promotion of Electronic Government Services). This means the Decision will be available to anyone with access to the internet. In accordance with Vaccine Rule 18(b), the parties have 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. Any changes will appear in the document posted on the website.

² Pursuant to Vaccine Rule 18(b), this Decision was initially filed on June 14, 2023, and the parties were afforded 14 days to propose redactions. The parties did not propose any redactions. Accordingly, this Decision is reissued in its original form for posting on the Court's website.

I. Procedural History

The procedural history of Mr. Veytsel's first case is detailed in the decision dismissing the case. See Veytsel v. Sec'y of Health & Hum. Servs., No. 22-544V, 2022 WL 17974427 (Fed. Cl. Dec. 28, 2022). Thus, this history is provided summarily.

Representing himself, Mr. Veytsel first filed a petition on May 18, 2022, seeking compensation "for injuries, including autism spectrum disorder," allegedly caused by a measles-mumps-rubella (MMR) vaccine he received on January 13, 1988. No. 22-544V, Pet., at 1. Mr. Veytsel stated that on September 18, 2018, he was diagnosed with autism spectrum disorder, Asperger's disorder, and attention hyperactivity disorder. Id. Mr. Veytsel further stated that, prior to the administration of the vaccine, he "was in good health and suffered no medical conditions." Id. Along with his petition, Mr. Veytsel filed two documents: a record showing that he received the MMR vaccine on January 13, 1988, and a letter from the Christian Health Counseling Center stating that he was seen by Dr. Aijazali Nanjani on September 19, 2018 and diagnosed with autism spectrum disorder, Asperger's disorder, and attention deficit hyperactivity disorder, combined type. No. 22-544V, CM/ECF 1-2.

Mr. Veytsel was ordered to file medical records beginning from three years before his vaccination until the present day. No. 22-544V, Order, issued May 24, 2022. Mr. Veytsel contacted chambers to inform the undersigned that he "did not plan to file records beyond what he ha[d] [already] filed." See No. 22-544V, Order, issued June 7, 2022. Mr. Veytsel was ordered twice more to file his medical records and was informed that his failure to do so would "likely result in the dismissal of his case." No. 22-544V, Order, issued June 7, 2022; Order, issued Sept. 7, 2022. Mr. Veytsel again contacted chambers and reiterated he did not have any additional medical records to file. Upon receipt of this information, the undersigned ordered Mr. Veytsel to show cause by November 28, 2022 as to why his case should not be dismissed. No. 22-544V, Order, issued Sept. 30, 2022.

On November 14, 2022, Mr. Veytsel submitted a filing averring that he had "expertise in [his] experience, and expertise in what is self evident." However, Mr. Veytsel did not file the requested medical records nor explain how his experience qualifies him to be an expert. The case was dismissed on December 13, 2022 for insufficient evidence. 2022 WL 17974427.

On March 28, 2023, Mr. Veytsel filed a second petition. This petition was identical to his first petition, and was accompanied by the same singular vaccination record and letter from the Christian Health Counseling Center. Mr. Veytsel was ordered to show cause as to why this case should not be dismissed as impermissibly filed by May 26, 2023. Order, issued April 12, 2023. Mr. Veytsel sent a letter to the court, dated April 12, 2023, entitled, "The mechanism by which the vaccine caused injury to my person." CM/ECF 10. Mr. Veytsel presented a numbered list of twelve steps, apparently outlining a theory by which a "foreign chemical compound" can create "an entrained braking mechanism for the advancement of development." Id. Mr. Veytsel did not cite any sources to support this theory, and did not make reference to the MMR vaccine nor the specific injuries he alleges. He did not address the question as to why his duplicate petition should not be dismissed under 42 U.S.C. § 300aa-11(b)(2).

II. Analysis

The Vaccine Act explicitly provides that only one petition may be filed for each administration of a vaccine. 42 U.S.C. § 300aa-11(b)(2). Mr. Veytsel's May 2022 and March 2023 petitions allege injury from the same MMR vaccine administration of January 13, 1988.

The undersigned recognizes that Mr. Veytsel is pro se, and is therefore entitled to a certain, but limited, amount of flexibility in his filings. See Colbert v. United States, 617 F. App'x 981, 983 (Fed. Cir. 2015) ("A pro se litigant's complaint is held to a less stringent standard than formal pleadings filed by lawyers") (citing Erickson v. Pardus, 551 U.S. 89, 94(2007)). Mr. Veytsel has been provided this flexibility. The insufficiency of the evidence in Mr. Veytsel's original case was first noted in the May 24, 2022 order for medical records. Mr. Veytsel was provided with three opportunities to file additional evidence, but he twice stated that he would not file any more records. His case was dismissed in a decision explaining why his petition was deficient. Mr. Veytsel then filed an identical petition. He was ordered to show cause as to why this case should not be dismissed as impermissibly filed. Order, issued April 12, 2023. Mr. Veytsel did not file anything to address this issue.

Although Mr. Veytsel's pro se status entitles him to some flexibility with his pleadings, it does not change the need for his petition to comply with the requirements of the Vaccine Act. See Kelley v. Sec'y, U.S. Dep't of Labor, 812 F.2d 1378, 1380 (Fed. Cir. 1987); Ling v. Sec'y of Health & Hum. Servs., No. 18-858V, 2019 WL 2606774, at *7 (Fed. Cl. May 21, 2019).

Mr. Veytsel's petition is DISMISSED as statutorily barred under 42 U.S.C. § 300aa-11(b)(2). The Clerk's Office is instructed to dismiss this case and to enter judgment in accordance with this decision. Information about filing a motion for review, including the deadline for any such submission, is available through the Vaccine Rules posted on the website for the Court of Federal Claims.

IT IS SO ORDERED.

s/Christian J. Moran
Christian J. Moran
Special Master